A UNION OF INDIA AND ORS.

v.

M/S. BANWARI LAL AND SONS (P) LTD.

APRIL 12, 2004

B [V.N. KHARE, CJ., S.H. KAPADIA AND S.B. SINHA, JJ.]

Arbitration—Non-residential premises—Assessment of damages for use and occupation—Property requisitioned under Requisitioning and Acquisition of Immovable Properties Act—After lapse of Act, occupant allowed time by Court to vacate—Assessment of damages referred to arbitrator—Arbitrator treating the occupation as illegal awarding **mesne** *profits–Held, where possession though not wrongful in the beginning assumes a wrongful character when it is unauthorisedly retained, owner is not entitled to claim mesne profits, but only the fair rent—On facts, occupant allowed to use and occupy the property under orders of Court possession cannot be said to be illegal and wrongful—Factors to be taken into consideration for assessment of fair rent, discussed—Requisitioning and Acquisition of Immovable Properties Act, 1952.*

Arbitration—Award—Setting aside of—Grounds discussed.

Certain commercial properties of the respondent were requisitioned under the Requisitioning and Acquisition of immovable Properties Act, 1952. Before the said Act lapsed on 10.3.1987, a notification under s.4 of the Land Acquisition Act, 1894 had been issued and declaration under ss.6 and 17 had been published. The respondent challenged the acquisition by filing a writ petition which was allowed by the High Court. Appellant's SLP was rejected by the Supreme Court, and they were allowed time to vacate the premises. The arbitrator made an award assessing damages @ Rs. 15 per sq. ft. per month for covered area, Rs. 10 sq.ft. per month for larger open space and Rs. 7 per sq.ft. per month for smaller open space. On dismissal of appellants' objections under ss.30 and 33 of the Arbitration Act, by the Single Judge and the consequent appeal by the Division Bench of the High Court, the appellants filed the present appeal.

It was contended for the appellant that the arbitrator erred in assessing the damages on the assumption that possession of the appellant after 10.3.1987 was illegal and in the nature of trespass. It was submitted

that the appellants having been allowed time till 31.3.1993 by the Court, use and occupation of the property was not illegal but permissible, and the respondent was entitled to claim rent only and not the mesne profits. It was also contended that the open land being part of the building, the arbitrator erred in assessing damages for open space separately when damages were assessed @ Rs. 15per sq.ft for built up area; and that arbitrator failed to take into considerations the relevant facts in assessing damages and erred in taking into account a non-comparable property.

Allowing the appeal, the Court

HELD: *Per Kapadia, J.* (For himself and for Khare, CJ.)

1. Where the possession though not wrongful in the beginning assumes a wrongful character when it is unauthorisedly retained, the owner is entitled to claim damages not on the basis of mesne profits but only on the basis of the fair rent. In the present case, in view of the permission granted by the Court enabling the appellant to use and occupy the property up to 31.3.1993, it cannot be said that the possession of the appellant was illegal and wrongful and in the nature of trespass. In the circumstancess, damages were claimable not on the basis of mesne profits but on the basis of fair rent. [1201-C-D]

Law of Damages and Compensation by Kameshwara Rao 5th Edn. Vol. I Page 528, referred to.

2.1. An award can be set aside when an arbitrator has misconducted the proceedings. Misconduct refers to legal misconduct which arises if the arbitrator on the face of the award arrives at a decision ignoring material documents. [1202-G-H]

K.P. Poulose v. *State of Kerala and Anr.*, AIR (1975) SC 1259 v. *Trustees of the Port of Madras* v. *Engineering Constructions Corporation Limited,* AIR (1995) SC 2423, relied on.

Municipal Corporation of Delhi v. *Ms. Jagan Nath Ashok Kumar and Anr.*, AIR (1987) SC 2316, held inapplicable.

2.2. In the instant case, the arbitrator was required to assess damages by applying correct principles of valuation. The property was under requisition upto 10.3.1987. Damages were required to be assessed for use and occupation of the premises after 10.3.1987 by the appellant under orders of the Court. The rent of the property which was accepted by the

A respondent and the building being a dilapidated; one its value as such shown in the municipal record have not been taken into account by the arbitrator. The respondent has not relied upon any valuation report nor has it examined any expert valuer in support of his claim for damages. The arbitrator has given his award based on evidence of lay persons. The sales/lease instances do not appear to be comparable. Besides, there was B no reason for arbitrator to assess damages for open space separately as it formed part of the main building. The rent method for assessing damages has not at all been considered by the arbitrator. Even while applying the income/profit method the expenses, the cost of investment etc, have not been taken into account. Therefore the impugned award stood vitiated and C is set aside. [1202-F-H; 1203-B-D]

Per Sinha, J. Concurring.

1. It is now well settled that when a question of law is referred to the arbitrator the award cannot be set aside only if a different view is D possible. However, it is also trite that if no specific question of law is referred, the decision of the arbitrator on that question would not be final, however much it may be within his jurisdiction and indeed essential for him to decide the question incidentally. Only in a case where specific question of law touching upon the jurisdiction of the arbitrator was referred for determining his jurisdiction by the parties, then the finding E of the arbitrator on the said question between the parties may be binding. It is also trite that where the award contains reasons, the same may be interfered, *inter alia*, when it is based on a wrong proposition of law. However, when the view of the arbitrator is a plausible one, the Court would not normally interfere. It is further trite that an arbitrator cannot F clothe himself with the jurisdiction when it has none.

[1204-F-G; 1205-A; G]

Rajasthan State Mines and Minerals Ltd. v. *Eastern Engineering Enterprises and Anr.*, [1999] 9 SCC 283; *Pure Helium India (P) Ltd.* v. *Oil and Natural Gas Commission*, [2003] 8 SCC 593; *Bharat Coking Coal Ltd.*, G v. *Annapurna Construction*, [2003] 8 SCC 154 and *M/s. Sathyanarayana Brothers (P) Ltd.* v. *Tamil Nadu Water Supply and Drainage Board*, (2003) 9 SCALE 769, relied on.

2. Correct determination of the quantum of damages by the arbitrator would depend upon application of the correct principles H therefor. The authorities on valuation of property lay down such

principles. It has not been shown that the Arbitrator in determining the quantum of damages adopted any known or accepted principle of valuation. Determination of quantum of damages would depend upon the fact of the matter as also the terms of the contract and other relevant factors. [1205-B-C]

M.D. Army Welfare Housing Organisation **v.** *Sumangal Services Pvt. Ltd.,* **(2003) 8 SCALE 424, relied on.**

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 1531 of 1999.

From the Judgment and Order dated 22.1.99 of the Delhi High Court in F.A.O. (OS) No. 147 of 1996.

Dr. Rajeev Dhavan, D.N. Goburdhan, Ms. Pinky Anand, Ms. Geeta Luthra and Rajesh for the Appellant.

Ashish Bhagat, A. Chaudhary, C.K.M. Singh, Ms. Manisha Suri and Ms. Manjeet Chawla for the Respondent.

The Judgments of the Court were delivered by

KAPADIA, J. M/s Banwari Lal & Sons (P) Ltd.-respondent herein is the owner of the property situated at 6, Ansari Road, Darya Ganj, New Delhi bearing municipal nos.4407-4412 admeasuring total area of 50328 square feets on which there are two bhawans named as Gopal Krishna Bhawan and Radha Krishna Bhawan along with garages, pump-house, godowns, store-room etc. The covered area is 20426.80 square feets whereas the balance area is an open area admeasuring 29901.20 square feets. (See: Legend at page 52 of the paper-book). Four flats on the first floor in Gopal Krishna Bhawan were requisitioned by Delhi Administration 27.9.1950 under Requisition and Acquisition of Immoveable Property Act, 1952 (hereinafter referred to as "the said Act"). On 13.3.1959, the remaining property was requisitioned under the said Act. Before the said Act lapsed on 10.3.1987, a notification under section 4 of the Land Acquisition Act was issued on 6.3.1987 for acquisition of the entire property. On 10.3.1987, declaration under sections 6 and 17 of the Land Acquisition Act was published. Aggrieved, the respondent herein filed CWP No.2385 of 1988, which was allowed by the High Court by judgment dated 4.2.1991 and Shri T.V.R. Tatachari, former Chief Justice of Delhi High Court was appointed as sole arbitrator to determine the damages w.e.f. 10.3.1987, payable by Delhi Administration to the respondent in respect

A of the property. The SLP taken out against the said judgment by the appellant was dismissed by this Court vide order dated 21.3.1991. Appellant was, however, allowed time to vacate the property by 31.3.1993. On 18.11.1991, the arbitrator made and published the award directing the appellant to pay damages at the rate of Rs. 5,81,770 per month w.e.f. 10.3.1987, to which objections under sections 30 and 33 of the Arbitration Act, 1940 were filed B by the appellant. The said objections were dismissed by the learned single Judge on 12.7.1995. Being aggrieved, the appellant appealed to the division bench of the High Court. By the impugned judgment dated 22.1.1999, the High Court dismissed the appeal. Against that judgment, the appellant has filed this appeal by way of special leave.

C

Under the award, damages have been fixed @ Rs. 15 per sq. ft. per month in respect of the covered area admeasuring 28518 sq. ft. whereas damages have been assessed @ Rs. 10 per sq. ft. per month for larger open spaces shown in the sketch earmarked as 'X-1, X-3 and X-4'. For smaller open spaces, earmarked as 'X-2, X-5', damages have been assessed at the D rate of Rs. 7 per sq. ft. per month. The property has been considered as commercial for assessing the damages at the above rates.

Dr. Rajeev Dhavan, learned senior counsel and Shri Goburdhan appearing on behalf of the appellant submitted that the assessed damages at Rs. 10 per sq. ft. per month for larger open spaces was highly usurious and E illegal. He submitted that the arbitrator had erred in assessing damages of Rs.1.54 lakhs per month for open land separately *vis-a-vis* the built up area particularly when the open land was part of the main building. In this connection, he urged that when damages were assessed for built up portion at Rs. 15 per sq. ft. per month, there was no question of the arbitrator once F again assessing damages for open spaces at Rs. 10 per sq. ft. per month. He pointed out that 22 flats were in a dilapidated condition which has not been taken into account. It was next contended that in the present case the respondent had accepted the rent for the said property in its entirety of Rs. 40793 per month till February, 1988 without any objection, which fact ought to have been considered by the arbitrator while assessing damages.

G

As can be seen from the facts enumerated above, the said Act lapsed on 10.3.1987, however, a notification was issued under section 4 of the Land Acquisition Act on 6.3.1987 for acquisition of the entire property which was challenged by the respondent in the High Court successfully. The SLP preferred H by the appellant was dismissed on 21.3.1991, however, time was given to the

appellant to vacate the property by 31.3.1993. On the basis of these facts, it was urged on behalf of the appellant that the arbitrator had erred in assessing damages on the assumption that the possession of the appellant after 10.3.1987 was illegal and in the nature of trespass. In this connection, it was contended that use and occupation of the property was not illegal but permissive particularly when this Court permitted the appellant to continue in possession till 31.3.1993 and, therefore, the respondent was not entitled to claim *mesne* profits but it was only entitled to rent. In this connection, it was further contended that prior to 10.3.1987 the property was under acquisition and, therefore, it fell outside the provisions of Delhi Rent Control Act. However, when the requisition period expired on 10.3.1987, the said property came under Delhi Rent Control Act w.e.f. 10.3.1987. This property was taken out from the purview of the Rent Act w.e.f. 1.12.1988 vide Delhi Rent Control (Amendment) Act, 1988 and, therefore, the damages for the period 10.3.1987 to 30.11.1988 could be assessed only on the basis of rent and not on income/ profit method. It was further pointed out that the arbitrator has awarded damages for built-up area @ Rs. 15 per sq. ft. per month (carpet area) by comparing the said property with the property at 2/10, Ansari Road, Darya Ganj, New Delhi. However, the respondent did not prove its claim. No valuation report was relied upon in support of its claim; no valuer was examined and no assessment proceedings under municipal law was relied upon in support of the claim of the respondent. Accordingly, it was submitted that the High Court had erred in dismissing the objections to the said award.

Mr. Ashish Bhagat, learned counsel appearing on behalf of the respondent submitted that before lapse of the said Act on 10.3.1987, notification under section 4 of the Land Acquisition Act for acquisition of the entire property was issued on 6.3.1987, which acquisition was subsequently struck down by the High Court on 4.2.1991. The SLP taken out against the said judgment by the appellant was dismissed by this Court on 21.3.1991. According to the learned counsel, in view of the above facts, possession of the property by the appellant after 10.3.1987 was wrongful and illegal and in the nature of trespass and, therefore, the arbitrator was right in assessing the damages for wrongful use and occupation of the respondent's property after 10.3.1987. It was urged that this Court had struck down the acquisition proceedings and consequently it was not open to the appellant to contend that they were in permissive use and occupation of the property. Since the appellant was trespasser in use and occupation of the property, they were liable to pay damages. It was urged that order dated 21.3.1991 passed by this Court in the SLP gave time to the appellant of two years to vacate the property but that

A would not make the possession of the appellant lawful or permissive. Consequently, the arbitrator was right in assessing the damages on the basis the appellant was liable to pay damages/*mesne* profits to the owners for wrongful use or occupation of the property.

As regards the question of quantum of damages awarded by the B arbitrator, it was submitted that since occupation and possession of the said property by the appellant was illegal and in the nature of trespass, damages were assessed on the basis of income/profit which the respondent would have received or realized from the said property if its possession had been surrendered to them by 10.3.1987, when the said Act lapsed. According to C the learned counsel, the said property was capable of being let out for commercial purposes, as held by the arbitrator and for calculating income or profit receivable/realizable it was necessary to ascertain the rate per square feet and also the area of the property on which damages were to be calculated. In support of the rates, respondent had examined three witnesses and on the basis of their evidence, the arbitrator has assessed the damages. Learned D counsel submitted that the quantum of damages is assessed on the basis of marketability of the property on the date when possession ought to have been handed over to the respondent and in cases where the property is in occupation of a trespasser, damages cannot be based on rental basis. It was also urged that for computing damages for illegal occupation, after 10.3.1987, rent payable E by the appellant during the period of requisition cannot be taken into account and, therefore, the arbitrator was right in quantifying the damages on the basis of the market value of the property on 10.3.1987. In this connection, it was submitted that in fact the appellant had agreed before the arbitrator to the rate of Rs. 15 per square feet for covered area and for open area, the appellant had left the rate for calculation purposes to the arbitrator and, F therefore, these questions need not be reopened or re-agitated before this Court in this appeal by way of special leave under Article 136 of the Constitution. In this connection, reliance has been placed on several judgments of this Court.

Two issues arise for determination in this civil appeal, namely, - whether G the use and occupation of the property by the appellant after 10.3.1987 was wrongful and illegal and in the nature of trespass; and-whether the arbitrator had failed to take into account relevant factors in assessing damages awarded in favour of the respondent.

H At the outset, we may point out that there are different methods of

valuation, namely, income/profit method, cost of construction method, rent method and contractors' method. In the present case, the arbitrator has applied the income/profit method. The above two issues are interconnected, as the arbitrator has assessed damages on the assumption that after 10.3.1987, the occupation and possession of the property was wrongful and illegal and in the nature of trespass. Accordingly, he has assessed damages on the footing that the respondent was entitled to *mesne* profits. This assumption was wrong as the appellant was given time by this Court to remain in possession up to 31.3.1993. In *Law of Damages & Compensation by Kameshwara Rao* (5th Edn., Vol. I Page 528], the learned author states that right to *mesne* profits presupposes a wrong whereas a right to rent proceeds on the basis that there is a contract. But there is an intermediate class of cases in which the possession though not wrongful in the beginning assumes a wrongful character when it is unauthorisedly retained and in such cases, the owner is not entitled to claim *mesne* profits but only the fair rent. In the present case, in view of the permission granted by this Court enabling the appellant to use and occupy the property up to 31.3.1993, it cannot be said that the possession of the appellant was illegal and wrongful and in the nature of trespass. In the circumstances, damages were claimable not on the basis of *mesne* profits but on the basis of fair rent. Even assuming for the sake of arguments that the arbitrator was right in applying income/profit method, the arbitrator has erred in not taking into account the expenses which the appellant was required to bear for maintenance of the property (including payment of taxes). The said property was under requisition up to 10.3.1987. The fair rent of the property was Rs. 40793 which was accepted by the respondent up to 28.2.1988, which fact has not been considered by the arbitrator. In the municipal records, the value of the building which is in dilapidated condition was shown at Rs. 27700 which was 10% of the original cost, which fact has also not been taken into account by the arbitrator. Similarly, there was no reason for the arbitrator to assess damages for open larger spaces @ Rs. 10 per sq. ft. per month when these open spaces form part of the main building for which damages were assessed @ Rs. 15 per sq. ft. per month. The respondent did not submit the valuation report in support of its claim for damages. No valuer was examined on behalf of the respondent-claimant. In the present case, buildings were old and their age has not been taken into account by the arbitrator particularly when the said property is sought to be compared with the property situated at 2/10, Ansari Road, Darya Ganj, New Delhi. No sale instances have been put in evidence. The evidence of three witnesses who were examined on behalf of the respondent was not cogent and reliable for the purposes of assessing the damages. These three witnesses were laymen and they were not

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A experts on valuation. The arbitrator has not taken into account the discounting factors, such as, the age of the building, dilapidated condition of the buildings, dilapidated condition of the flats, expenses to upgrade the buildings etc. There is no evidence to support the rate of Rs. 15 per sq. ft. per month for built up area. There is no reason as to why the carpet area and not the built up area has been taken into account. The point which we would like to B emphasize is that large number of relevant factors have not been taken into account by the arbitrator while awarding the damages to the extent of Rs. 6.5 crores (approximately).

Before us, it was vehemently urged on behalf of the appellant that C reasonableness of the reasons given by an arbitrator in making his award cannot be challenged in a special leave petition. In the present case there was no violation of rules of natural justice. It was urged that it may be possible that on the same evidence, the Court might have arrived at a different conclusion than the one arrived at by the arbitrator, but that by itself is no ground for setting aside an the award of the arbitrator. In support of the D above argument, reliance was placed on the judgment of this Court in the case of *Municipal Corporation of Delhi* v. *M/s Jagan Nath Ashok Kumar and Anr.,* reported in AIR (1987) SC 2316. We do not find any merit in this argument. In that matter on facts this Court found that the reasons given by the arbitrator were cogent and they were based on material on record. Hence, E the said judgment has no application to the facts of the present case.

As stated above, the respondent has not relied upon valuation report in support of his claim for damages. It has not examined an expert valuer in support of its claim. The arbitrator has given his award based on evidence of laypersons. The sales/lease instances do not appear to be comparable. In such F matters, arbitrators are required to apply correct principles of valuation. As stated above, in this case the age of the property, the dilapidated condition of the property, the rent paid for the property prior to 10.3.1987 have not been taken into account. Even the principles of valuation based on income/ profit method have not been correctly appreciated. The municipal assessment has also not been taken into account. Without the relevant factors being taken G into account, it was not open to the arbitrator to award a sum of Rs.6.5 crores (approximately) as damages. In the case of *K.P. Poulose* v. *State of Kerala and Anr.,* reported in AIR (1975) SC 1259 it has been held by this Court that an award can be set aside when an arbitrator has mis-conducted the proceedings. Misconduct refers to legal misconduct which arises if the H arbitrator on the face of the award arrives at a decision ignoring material

documents. In the case of *Trustees of The Port of Madras* v. *Engineering Constructions Corporation Limited,* reported in AIR (1995) SC 2423 it has been held by this Court that in the case of a reasoned award, the Court can interfere if the award is based upon a proposition of law which is unsound in law and which erroneous proposition of law vitiates the decision of the arbitrator. The error of law must appear from the award itself. In the present case, the arbitrator was required to assess damages by applying correct principles of valuation. As discussed above, on facts of this case, damages were required to be assessed for use and occupation of the premises after 10.3.1987 by the appellant under the orders of the Court. The rent method for assessing damages has not at all been considered by the arbitrator while assessing damages. Even while applying the income/profit method, the expenses, the cost of investment etc. have not been taken into account. Therefore, the impugned award stood vitiated.

For the aforestated reasons, this civil appeal stands allowed and the impugned judgment and order of the High Court is quashed and set aside. Consequently, we set aside the award dated 18.11.1991 passed by the arbitrator and remit the matter to him for disposal in accordance with law. If the said arbitrator is not available, the High Court shall appoint another arbitrator who shall decide the matter within three months from the date of appointment. In the facts and circumstances of the case, there shall be no order as to costs.

S.B. SINHA, J. How the quantum of damages should be calculated by an arbitrator for occupation of a property by the appellant herein pursuant to or in furtherance of notification issued under the provisions of the Land Acquisition Act which was declared illegal is the short question involved in this appeal.

The premise in question admeasuring 50,328 sq. ft. is situated at 6, Ansari Road, Darya Ganj. It was requisitioned by Delhi Administration under the provisions of Requisition and Acquisition of Immovable Property Act, 1952. The said Act lapsed on 10th March, 1987. A notification was issued under Section 4 of the Land Acquisition Act for acquisition of the entire property on 6th March, 1987 whereafter a declaration purported to be in terms of Sections 6 and 17 thereof was issued on 10th March, 1987. The said notification was set aside by the High Court by a judgment dated 04.02.1991 on a writ petition filed by the Respondent herein.

The High Court while quashing the said acquisition proceeding appointed

A Justice T.V.R. Tatachari as an arbitrator to determine the damages payable by the Delhi Administration for occupation of the said property. It is not in dispute that this Court while permitting the appellant to remain in possession upto 31.03.1993 directed it to hand over vacant possession on or before the said date. It was, however, clarified that the arbitrator appointed by the High Court may give his award and file the same in the High Court for appropriate B orders.

Even if the contention of the appellant to the effect that its possession in relation to property in question was not of a trespasser is not accepted, what should be the reasonable amount of damages for occupation thereof was C the question required to be determined by the Arbitrator. The learned Arbitrator posed unto himself a correct question when he said :

> "It has to be remembered that the income a private property would fetch by being let out, is not a fixed and rigid figure, but would depend upon various factors such as the need and urgency of the D lessee, the bargaining ability of the lessor, the prevailing competition in the locality and the like."

The learned Arbitrator passed a reasoned award. Before the Arbitrator parties adduced evidences. As many as 16 issues were framed by the Arbitrator. The learned arbitrator was also required to determine a question as regard E status of the appellant herein *vis-a-vis* the said property upon delivery of the judgment of the High Court dated 4.2.1991 declaring the acquisition proceedings to be illegal on the ground that Section 17 of the Land Acquisition Act could not have been taken recourse to.

F It is now well settled that when a question of law is referred to the arbitrator the award cannot be set aside only if a different view is possible. However, it is also trite that if no specific question of law is referred, the decision of the Arbitrator on that question would not be final, however much it may be within his jurisdiction and indeed essential for him to decide the question incidentally. Only in a case where specific question of law touching G upon the jurisdiction of the arbitrator was referred for determining his jurisdiction by the parties, then the finding of the arbitrator on the said question between the parties may be binding. (See *Rajasthan State Mines and Minerals Ltd.* v. *Eastern Engineering Enterprises and Anr.*, [1999] 9 SCC 283 and *Pure Helium India (P) Ltd.* v. *Oil and Natural Gas Commission,* [2003] 8 SCC 593).

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It is also trite that where the award contains reasons, the same may be interfered, *inter alia*, when it is based on a wrong proposition of law. However, when the view of the arbitrator is a plausible one, the Court would not normally interfere.

The questions raised in this appeal are required to be considered keeping in view the aforementioned legal principles. Correct determination of the quantum of damages by the arbitrator would depend upon application of the correct principles therefor. The authorities on valuation of property lay down such principles. It has not been shown that the learned Arbitrator in determining the quantum of damages adopted any known or accepted principle of valuation. Determination of quantum of damages would depend upon the fact of the matter as also the terms of the contract and other relevant factors. (See *M.D. Army Welfare Housing Organisation* v. *Summangal Services Pvt. Ltd.* (2003) 8 SCALE 424).

In *Bharat Coking Coal Ltd.* v. *Annapurna Construction,* [2003] 8 SCC 154, this Court in no uncertain terms held that the arbitrator cannot act arbitrarily, irrationally, capriciously or independent of the contract. It was further opined.

> "There lies a clear distinction between an error within the jurisdiction and error in excess of jurisdiction. Thus, the role of the arbitrator is to arbitrate within the terms of the contract. He has no power apart from what the parties have given him under the contract. If he has travelled beyond the contract, he would be acting without jurisdiction, whereas if he has remained inside the parameter of the contract, his award cannot be questioned on the ground that it contains an error apparent on the face of the records."

The decision of this Court in *Bharat Coking Coal Ltd.* (supra) was followed in *M/s. Sathyanararyana Brothers (P) Ltd.* v. *Tamil Nadu Water Supply & Drainage Board,* (2003) 9 SCALE 769 where it was emphasised that the arbitrator while making his award cannot ignore very material and relevant documents relevant for determining the controversy so as to render a just and fair decision.

It is further trite that an arbitrator cannot clothe himself with the jurisdiction when it has none.

As the learned Arbitrator did not adopt any known method of valuation

A of the property, it must be held that while making the award he applied a wrong principle of law and, thus, the same cannot be sustained.

For the aforementioned reasons, I respectfully concur with the judgment and order proposed to be delivered by Brother Kapadia, J.

B R.P. Appeal allowed.